

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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11-CV-3321 (JSR)

BRIAN JOHNSTON and NILE CHARLES,

Plaintiffs,

-against-

APPLE INC. & OMNISCIENT INVESTIGATION CORP.,

Defendants.

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**DECLARATION OF
COUNSEL IN
OPPOSITION TO
DEFENDANT APPLE'S
MOTION TO DISMISS**

WILLIAM K. PHILLIPS, ESQ., declares, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. I am an attorney duly admitted to practice in the Courts of the State of New York, and in the United States District Court for the Southern District of New York. I represent the plaintiffs in the above-captioned action. As such, I am fully familiar with the facts and circumstances of this action, the basis of my knowledge being the files maintained by my office.
2. I submit this Declaration in Opposition to Defendant Apple's Motion to Dismiss and for such other and further relief as this Court deems just and proper.
3. A copy of Plaintiffs' Second Amended Complaint is attached hereto as Exhibit "A."
4. No prior application for the relief herein requested has been made to this Court.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order:

- (i) Denying Defendant Apple's Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Rule 12(d) of the Federal Rules of Civil Procedure; and
- (ii) For such other and further relief as this Court may deem just and proper.

Dated: New York, New York
August 18, 2011

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_____/s/_____
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